

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Nov 18, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

PERMANENT GENERAL  
ASSURANCE CORPORATION, a  
Wisconsin corporation,

Plaintiff,

v.

DIEGO VILLANUEVA, a Washington  
resident, and ESTATE OF FRANCES  
NORTHOVER, a Washington resident,

Defendants.

No. 1:20-cv-03022-SMJ

**ORDER GRANTING MOTION  
FOR DEFAULT JUDGMENT**

Before the Court, without oral argument, is Plaintiff Permanent General Assurance Corporation's ("PGAC") Motion for Default Judgment, or Alternatively, Motion for Summary Judgment, ECF No. 35. PGAC sued for declaratory judgment that it owes no obligation to provide coverage to Defendants under an automobile insurance policy that PGAC issued to Diego Villanueva for any claims arising out of a May 7, 2019 automobile accident, in which Frances Northover was driving a 2007 Dodge Durango. Despite being properly served, neither Diego Villanueva nor the Estate of Frances Northover (collectively, Defendants) have answered the Complaint nor responded to PGAC's motion. As result, and in view of the ongoing

1 prejudice to PGAC on the issue of coverage, the Court finds default judgment  
2 appropriate and grants PGAC's motion.

### 3 BACKGROUND

4 PGAC filed the complaint on February 21, 2020. According to the complaint,  
5 on or about May 7, 2019, an automobile accident occurred on Larue Road at the  
6 center of State Route 97 near Yakima, Washington. ECF No. 1. The accident  
7 occurred when Northover, while driving a 2007 Dodge Durango, failed to yield at  
8 a stop sign and struck a semi-truck, which was towing a trailer. *Id.* The truck and  
9 trailer were owned by H.R. Spinner Corporation and insured by Zurich. *Id.* It was  
10 reported that four people died in the accident, including Northover and three  
11 passengers. *Id.* Two other passengers apparently survived the accident yet sustained  
12 injuries. *Id.* Villanueva allegedly owned the Durango at the time of the accident. *Id.*  
13 On October 15, 2019, Allied Interstate, on behalf of Zurich, issued to PGAC a  
14 subrogation demand letter, seeking to recover \$15,560.00 Zurich ostensibly  
15 incurred funding repairs for damage to the trailer attached to the semi. *Id.*

16 PGAC served a Summons and Complaint on Defendants Villanueva and the  
17 Estate of Frances Northover on March 4, 2020 and February 27, 2020, respectively.  
18 ECF Nos. 5, 6. Defendants have failed to appear or otherwise respond to the  
19 Complaint in this lawsuit. The Clerk of the Court entered an Order of Default on  
20 June 4, 2020. ECF No. 13. PGAC served the First Amended Complaint on

1 Defendants Villanueva and the Estate of Frances Northover on July 31, 2020 and  
2 July 30, 2020, respectively. ECF Nos. 26, 27. Defendants have failed to appear or  
3 otherwise respond to the First Amended Complaint in this lawsuit. The Clerk of the  
4 Court entered a second Order of Default on September 8, 2020. ECF No. 30.

5 PGAC filed its Motion for Default Judgment, or Alternatively, Motion for  
6 Summary Judgment on September 25, 2020. ECF No. 35. PGAC served Villanueva  
7 and the Northover Estate with the motion briefing on September 28, 2020. ECF  
8 Nos. 37, 38. The deadline for Defendants to respond to the motion was October 26,  
9 2020.

#### 10 **LEGAL STANDARD**

11 Entry of default judgment is discretionary. *Aldabe v. Aldabe*, 616 F.2d 1089,  
12 1092 (9th Cir. 1980). When possible, cases should be resolved on their merits, and  
13 the entry of default judgment is an extreme measure reserved for unusual  
14 circumstances. *Westchester Fire Ins. Co. v. Mendez*, 585 F.3d 1183, 1189 (9th  
15 Cir. 2009) (citing *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th  
16 Cir. 1985)). In evaluating the propriety of default judgment, the court is guided by  
17 seven non-exclusive factors:

18 (1) [T]he possibility of prejudice to the plaintiff, (2) the merits of  
19 plaintiff's substantive claim, (3) the sufficiency of the complaint, (4)  
20 the sum of money at stake in the action[,] (5) the possibility of a dispute  
concerning material facts[,] (6) whether the default was due to  
excusable neglect, and (7) the strong policy underlying the Federal  
Rules of Civil Procedure favoring decisions on the merits.

1 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). The court assumes the  
2 facts alleged in the complaint are true. *Geddes v. United Fin. Grp.*, 559 F.2d 557,  
3 560 (9th Cir. 1977).

## 4 **DISCUSSION**

5 Having reviewed the motion and the record in this matter considering the  
6 *Eitel* factors, the Court is fully informed and finds that entry of default judgment is  
7 appropriate in this case.

8 First, the Court considers the possible prejudice to PGAC. *See Eitel*, 782 F.2d  
9 at 1471–72. PGAC’s claim for declaratory relief cannot move forward if default  
10 judgment is not entered. *Elektra Entm’t Grp., Inc. v. Crawford*, 226 F.R.D. 388,  
11 391 (C.D. Cal. 2005) (finding the prejudice factor when Plaintiff would be denied  
12 the right to judicial resolution of the claims presented). Moreover, this lawsuit is the  
13 only means by which PGAC can establish that it owes no coverage for the accident.  
14 *Am. Commerce Ins. Co. v. Schierman*, No. C12-0195JLR, 2012 WL 13018750, at  
15 \*3 (W.D. Wash. June 25, 2012) (finding that declaratory judgment is the only means  
16 that an insurer can establish it has no duty to defend or indemnify an insured). This  
17 factor weighs in favor of default judgment.

18 Second, the Court considers the merits of PGAC’s substantive claim. *See*  
19 *Eitel*, 782 F.2d at 1471–72. Coverage under the policy is restricted to “the  
20 ownership or use of” a “covered auto” or a “non-owned auto.” The Durango does

1 not qualify as either because: (1) the policy declarations page does not list the  
2 Durango; (2) there is no evidence that Villanueva acquired the Durango to replace  
3 the insured vehicle that appears in the policy declarations; and (3) Villanueva  
4 owned the Durango as early as November 28, 2017—over 18 months before the  
5 accident. This factor therefore weighs in favor of default judgment. *See Eitel*, 782  
6 F.2d at 1471–72.

7 Third, the Court considers the sufficiency of the complaint. *See Eitel*, 782  
8 F.2d at 1471–72. The Court assumes the facts alleged in the complaint are true.  
9 *Geddes*, 559 F.2d at 560. The First Amended Complaint alleges facts sufficient to  
10 establish that there is no coverage for any claim arising from the accident. *See*  
11 *generally* ECF No. 25. The Court finds this factor also weighs in favor of default  
12 judgment.

13 Fourth, the Court considers the sum of money at stake in the action. *See*  
14 *Eitel*, 782 F.2d at 1471–72. While PGAC seeks only declaratory judgment in this  
15 matter—and thus entry of default judgment would not directly result in a monetary  
16 award—the Court is cognizant that default judgment will almost certainly result in  
17 PGAC denying coverage in the underlying insurance dispute. This outcome could  
18 result in costs to Defendants associated with both the continued defense of that  
19 matter and any eventual judgment or settlement. So, while PGAC claims no  
20 monetary damages are involved in this suit—money is nevertheless at stake. The

1 Court thus finds this factor weighs against default judgment.

2 Fifth, the Court considers the possibility of disputed material facts. *See Eitel*,  
3 782 F.2d at 1471–72. On the record before the Court, the issue of coverage for the  
4 underlying dispute seems clear-cut. *See generally* ECF Nos. 25, 35. That said, the  
5 Court notes that record is provided entirely by PGAC and thus, there is some  
6 possibility that discovery would produce evidence to muddy the waters concerning  
7 coverage, and this factor weighs somewhat against entry of default judgment.

8 Sixth, the Court considers the possibility that Defendants defaulted due to  
9 excusable neglect. *See Eitel*, 782 F.2d at 1471–72. There is no excusable neglect  
10 when a defendant is “properly served with the complaint, the notice of entry of  
11 default, [and] the papers in support of the [default judgment] motion.” *Shanghai*  
12 *Automation Instrument Co. v. Kuei*, 194 F. Supp. 2d 995, 1005 (N.D. Cal 2001).  
13 PGAC effected service of process several times throughout this suit. *See, e.g.*, ECF  
14 Nos. 5, 6, 14, 15, 16, 19, 20, 22, 23, 26, 27, 31–34, 37, 38 & 40. As a result, the  
15 Court finds there is no excusable neglect for Defendants’ failure to respond, and  
16 thus this factor weighs in favor of default judgment.

17 Finally, the Court considers the strong preference, expressed in the Federal  
18 Rules of Civil Procedure, for resolution of claims on the merits. *See Eitel*, 782 F.2d  
19 at 1471–72; *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985).  
20 Although this factor “almost always disfavors the entry of default judgment,” it is

1 not dispositive. *Vawter v. Quality Loan Serv. Corp. of Wash.*, No. C009-1585JLR,  
2 2011 WL 1584434, at \*6 (W.D. Wash. Apr. 27, 2011). Despite that strong  
3 preference, the Court finds this is an appropriate case for entry of default judgment.  
4 This matter has been pending since February 2020; Defendants have had ample  
5 opportunity to appear and defend against the merits of PGAC's claims. Because  
6 further delaying judgment would result in continuing prejudice to PGAC—whose  
7 only recourse under Washington law for relief from its duty to defend is obtaining  
8 judgment in a case such as this one—and because the merits of PGAC's claim  
9 appear strong, the Court finds entry of default judgment appropriate. Because the  
10 Court finds entry of default judgment warranted, it declines to evaluate the merits  
11 of PGAC's alternative motion for summary judgment. *See* ECF No. 35.

12 Accordingly, **IT IS HEREBY ORDERED:**

- 13 1. Plaintiff Permanent General Assurance Corporation's motion for  
14 default judgment, **ECF No. 35**, is **GRANTED**.
- 15 2. The Clerk's Office is directed to **ENTER DEFAULT JUDGMENT**  
16 in favor of Plaintiff.
- 17 3. All hearings and other deadlines are **STRICKEN**.

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1           4.     The Clerk's Office is directed to **CLOSE** this file.

2           **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
3 provide copies to all counsel and to Defendants at their last known addresses.

4           **DATED** this 18<sup>th</sup> day of November 2020.

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                              SALVADOR MENDOZA, JR.  
                              United States District Judge